

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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Docket No. EP 772

**OVERSIGHT HEARING PERTAINING TO UNION PACIFIC RAILROAD COMPANY'S  
EMBARGOES**

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**NATIONAL STONE, SAND AND GRAVEL ASSOCIATION COMMENTS  
ON UNION PACIFIC RAILROAD COMPANY'S EMBARGOES**

Submitted via e-filing at [www.stb.gov](http://www.stb.gov)

The National Stone, Sand & Gravel Association ("NSSGA") submits these written comments to the Surface Transportation Board ("STB" or "Board") pursuant to the November 22, 2022, Notice from the STB in the proceeding referenced above, which permits interested stakeholders to submit testimony or comments on the issues raised in the November 22, 2022, Notice in this matter.

NSSGA is the leading voice and advocate for the aggregates industry. Our members are stone, sand, and gravel producers and the equipment manufacturers and service providers who support them. NSSGA's member companies produce more than 90 percent of the crushed stone and 70 percent of the sand and gravel consumed annually in the United States. Aggregates are the building block that builds towns and cities and the connections in between. The industry is synonymous with infrastructure, homes, schools, hospitals, and every community. Aggregates play a crucial role in everything we touch - housing, roads, railways, bridges, tunnels, ports, water supply, sewers, electrical grids, and telecommunications.

As a result, NSSGA members will play a crucial role in the success of the Infrastructure Investment and Jobs Act ("IIJA") that became effective on November 15, 2021. The IIJA will help rebuild America's roads, bridges, ports and rail and all infrastructure projects funded under this historic legislation. It will strengthen supply chains by making long overdue improvements for the nation's ports, airports, rail, and roads. The aggregates industry will supply the materials needed to make these necessary projects happen.

The NSSGA also represents industrial sand companies, the companies that provide the essential raw materials for the manufacture of glass, shape metal products (made in foundries), ceramics and other goods that we take for granted, but that are essential to our standard of living. Industrial sand is also used as a proppant in the production of oil & gas from shale; the United States cannot produce oil and natural gas sufficiently to meet its needs without industrial sand as a proppant. While the oil & gas industry would prefer to source its sand proppants as close to the

wells as possible, it is often dependent on sand proppant shipped via rail, particularly from the Upper Midwest, to bring wells into production. The entire supply chain associated with a range of businesses, whether glass manufacturing or oil & gas production, is at risk because of poor rail service, and costs that businesses incur (and ultimately the prices that consumers will pay) are negatively impacted by poor rail service.

The NSSGA's comments specific to the Union Pacific Railroad Company ("UP") embargo practices are set forth below. In the interest of brevity, we have outlined in detail the experiences of two member companies – one a producer of aggregates and cement and the other of industrial sand -- as examples of the negative impacts of the UP's embargo policies.

### Industrial Sand Company Experience

“On Friday, April 8, 2022, at 2:00PM, the UP informed us that at midnight on April 11, 2022 (the next business day), the UP wanted us to curtail shipments by 40%. The UP was not able to answer any of our questions about why this was happening to our business specifically, how they came up with the 40% reduction or how it would work mechanically. The UP stated that we would only be able to ship a set number of rail cars per day but was not able to answer how that would work considering that our plants all had varying switch days. One plant is only switched once per week and its output exceeded the daily limit. On April 11, 2022, the UP called and stated that the curtailment was going to be delayed by a week so they could better answer customer questions. On April 14, 2022, the UP informed us that they no longer planned to curtail our shipments. However, we had just leased 300 additional rail cars for our UP business, which was seeing a forecasted surge in demand. They informed us that if we brought these cars online, we could be subject to embargo. At that time, the UP was not able to tell us when we could start shipping these additional carloads. From April to June 2022, we estimate that we lost \$1.7M in revenue each month because the UP would not allow us to increase our shipments to the forecasted levels. (Fortunately, we were able to convince the lessor of these additional rail cars to hold the cars for us until we could utilize them, allowing us to avoid paying rent on idle equipment. In the fourth quarter of 2022, we were finally able to start using the additional rail cars on another railroad.)

“We did not hear much more from the UP about our ‘inventory’ of cars until October 2022, when the UP stated to us that the UP would be introducing the “inventory management” program again in November 2022. Under this program, if we ship more rail cars than we had in the prior 14 days, or if we ship rail cars down lanes that we had not used in the prior 14 days, we would be warned and embargoed. The UP's desire is for us to ship the same number of cars down each lane every single day. Unfortunately, our business does not work that way. Our business is non-linear and does not fit the UP's ‘Precision Scheduled Railroading’ concepts.”

“Roughly 50% of our UP volume is for the supply of raw materials to oil and gas exploration companies, used in the completion of wells to allow oil and gas production from shale formations. The orderbook for these energy customers is volatile. We mine different products, and the distribution between them is different every single day. This causes our production to be variable from day to day and week to week. Our energy customers are drilling wells in the Earth, and their requirements for our products are different depending on where our energy

customers are drilling. The amount and type of product per well varies, so jobs differ in size. Our energy customers' drilling rigs move frequently. We are sometimes competing on a job-by-job basis. Our demand points change depending on whether we win or lose on potential energy business. Our energy customers may be sourcing products from multiple suppliers. Our energy customers work outdoors, and weather events frequently impact their operations and delay jobs. We only ship to confirmed orders. We ship railcars only if ordered by a customer. If we do not have space to accept cars into our terminal at destination, we do not ship them. (We do not like to pay demurrage.) The UP does not seem to care. We are a UP captive shipper, and we have no other economically viable option to move our products to market. The UP says this inventory management program is designed to keep customers with private rail cars from adding them to the railroad to compensate for the UP's poor performance. Despite repeated attempts by us to demonstrate to the UP that we are not in that group of customers, the UP will not listen. The UP's inventory management program restricts our growth opportunities. Last week, after weeks of threats, the UP did embargo one of our facilities. This embargo will last two weeks. For every carload that we ship, we are now required by the UP to manually add a permit number to the waybill for the UP to accept it. The UP's inventory management program has kept us from growing our business in 2022, and we expect that this will continue in 2023."

"We request that the STB take action to end embargoes that are trying to enforce PSR principles and restrict customer growth, under the guise that they are relieving congestion. The UP stated that we are one of 250 customers to be embargoed last week. Like us, those other 249 customers are trying to run their businesses. We are all suffering because the UP cut their resources too deeply and cannot serve those who are dependent on them."

#### Aggregates and Cement Company Experience

"We have two separate businesses in Texas that are captive to the UP, and we therefore rely heavily on the UP for business success."

"Our cement business relies exclusively on the UP for both inbound coal and outbound finished product delivery in the manifest network. Our aggregates business is 90% UP captive. 25% to 30% of our annual volume is carried by the UP to terminals and direct to customers in unit trains (a single train of 95+ cars delivered from origin to destination)."

"For our cement business, network congestion and threat of embargoes for both our suppliers and us as a shipper has negatively impacted the fluid production of cement as well as shipments to customers across the last 18 months."

"As network congestion has been prolific across the last 18 months, assets are reallocated to provide relief. Reallocation of locomotives to relieve manifest congestion is not limited to Texas markets or Southwest markets which in turn delays the improvement of service levels for our aggregates business shipping unit trains. Locomotives reallocated to relieve west coast manifest congestion create an extended gap of locomotives to meet demand. The volume shortfall in 2022 will be greater than 10% compared to plan, with even greater impacts to revenue and profitability. Despite frequent forecasting and communication to the UP, the number of achieved train starts continues to fall well short of stated demand on a monthly basis. The resulting impact

of these delays to our customers and consumers are project delays and higher costs to source raw materials.

In conclusion, the NSSGA again commends the STB for conducting the hearing and accepting written comments on Union Pacific Railroad Company's Embargoes. The experiences outlined above by our member company is a clear violation of UP's common carrier obligation. This behavior in refusing to transport goods is completely unreasonable and calls for intervention by the STB. We urge the STB to take prompt action to help alleviate the crisis currently confronting freight rail shippers who are harmed by the UP's embargo policies.

Respectfully submitted,

On behalf of NSSGA

December 13, 2022